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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL R. SCHNEIDEWEND and AARON H. DINWIDDIE

Appeal 2008-3241
Application 09/190,309
Technology Center 2600

Decided: September 8, 2008

Before KENNETH W. HAIRSTON, JOHN A. JEFFERY,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's rejection of claims 1-19. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

Appellants' claimed invention is directed to a system for initiating scheduled program processing functions such as program recording by deriving a time clock based on a current time reference indication produced by a particular broadcast source (Spec. 2:33-36).

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A system comprising:

a processor for providing an electronic program guide (EPG), the EPG operable by a user (1) to select a first program and a second program received from corresponding programs sources and (2) to select a first program processing function for the first program and (3) to select a second program processing function for the second program;

a tuner operable by the processor to receive (1) for the first program, first current time reference information from a first corresponding program source, wherein the first current time reference information provides information for synchronizing a scheduling clock with a clock of the first corresponding program source, and (2) for the second program, second current time reference information from a second corresponding program source, wherein the second current time

reference information provides information for synchronizing a scheduling clock with a clock of the second corresponding program source;

the processor programmed to derive a first scheduling clock based on the first current time reference information, the first scheduling clock synchronized with the clock of the first corresponding program source;

the processor programmed to initiate the first program processing function based upon the first scheduling clock;

the processor programmed to derive a second scheduling clock based on the second current time reference information, the second scheduling clock synchronized with the clock of the second corresponding program source; and

the processor programmed to initiate the second program processing function based upon the second scheduling clock.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Young	US 5,479,268	Dec. 26, 1995
Landis	US 5,561,461	Oct. 01, 1996
Roop	US 5,619,274	Apr. 08, 1997
Usui	US 5,808,694	Sep. 15, 1998

Advanced Television Systems Committee, *Program and System Information Protocol for Terrestrial Broadcast and Cable*, Dec. 23, 1997, pp. 1-93 (hereinafter ATSC).

The following rejections are before us for review:

1. Claims 1-2, 4-6, 10-11, and 13-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Young.
2. Claims 3 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Young in view of Roop.
3. Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Young in view of ATSC and Landis.
4. Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Young in view of ATSC.
5. Claims 8-9 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Young in view of Usui.

Independent claims 1 and 16 and their dependent claims 2, 4-6, 10-11, 13, 14, 15 and 17, were argued as a group with claims 1 and 16 as representative (App. Br. 6-11). Dependent claim 15 was argued separately (App. Br. 11-12; Reply Br. 13-14). Furthermore, Appellants have presented no further arguments as to the additional references of Roop used in rejecting claims 3 and 18, ATSC and Landis used in rejecting claim 7, ATSC used in rejecting claim 12, and Usui used in rejecting claims 8-9 and 19 but instead rely on the arguments provided for claims 1 and 16 (App. Br. 6-11). Therefore, claims 3, 7-9, 12, and 18-19 will likewise stand or fall with claims 1 and 16.

Thus, as indicated by Appellants, claims 2-14 stand or fall with claim 1, claims 17-19 stand or fall with claim 16, and claim 15 stands or falls by itself (App. Br. 6).¹

ANTICIPATION

There are two anticipation issues before us regarding whether Appellants have shown that the Examiner erred in rejecting claims under 35 U.S.C. § 102(b).

We present these issues as they correspond to, and in the order of, Appellants' presented arguments:

Regarding claims 1-2, 4-6, 10-11, and 13-17

Did the Examiner err in determining that Young teaches a tuner for receiving current time reference information from two program sources used to synchronize a scheduling clock with clocks from the two program sources as claimed?

Regarding claim 15

Did the Examiner err in determining that Young teaches maintaining for at least a period of time, both the first scheduling clock and the second scheduling clock as claimed?

¹ Only arguments made by Appellants have been considered in this decision. Arguments which Appellants could have made but did not make in the Briefs have not been considered and are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).

FINDINGS OF FACT

The relevant facts include the following:

1. Young teaches that programmable tuner 202 tunes automatically to the station or cable channel (program source) carrying the data when an update is required, where the EPG listings data is extracted from the VBI of the channel and stored in schedule memory 232 (col. 12, ll. 58-67).
2. Young further teaches that other information is transmitted to the schedule/tape controller 180 and stored in the system RAM memory 240, which includes schedule update time and last minute schedule change data (col. 13, ll. 3-8).
3. Young teaches that the updated schedule information or last minute schedule change data provide information for properly synchronizing the scheduling clock (system clock 230; col. 13, ll. 17-20) with a clock corresponding to the first corresponding program source (schedule update information transmitted from the first program source). This is done by providing the schedule update information (col. 13, ll. 3-8) and by recording a selected program by comparing the system clock 230 to the program start time copied to the Record Memo RAM 236 from the program start time stored in schedule memory 232 and updated by a schedule update time (col. 13, ll. 14-24; col. 13, ll. 3-8).
4. Young teaches multiple programs transmitted from multiple sources can be scheduled for recordings (Figure 4) and can be shifted in time due to updated schedule information (col. 13, ll. 3-8).

5. Young teaches maintaining multiple clocks wherein multiple recordings are scheduled for a period of time (11:30 AM to 9:00 PM during day 4/3) (Figure 4).
6. Appellants' disclosure states that "[t]he scheduling time clock is re-synchronized to the STT time reference information provided by a particular broadcast source" (Spec. 8:11-15).
7. Appellants' disclosure refers to a second clock regarding the display clock of Figure 2, which is not a scheduling clock (Fig. 2 and Spec. 14:5-22).

PRINCIPLES OF LAW

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc., v. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Although claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

ANALYSIS

Regarding claims 1-2, 4-6, 10-11, and 13-17

Did the Examiner err in determining that Young teaches a tuner for receiving current time reference information from two program sources used to synchronize a scheduling clock with clocks from the two program sources as claimed?

Appellants argue that Young does not teach a tuner for receiving current time reference information from two program sources used to synchronize a scheduling clock with clocks from the two program sources as claimed in independent claims 1 and 16 (App. Br. 9).

The Examiner responds that Young teaches that programmable tuner 202 tunes automatically to the station or cable channel (program source) carrying the data when an update is required, where the EPG listings data is extracted from the VBI of the channel and stored in schedule memory 232 (Ans. 14 and Finding of Fact 1). Young further teaches that other information is transmitted to the schedule/tape controller 180 and stored in the system RAM memory 240, which includes schedule update time and last minute schedule change data (Ans. 14 and Finding of Fact 2). Thus, the Examiner states that either of these cited portions of Young can be interpreted as the current time reference information from a first corresponding program source (Ans. 14 and Findings of Fact 1 and 2).

The Examiner further states that Young teaches that the updated schedule information or last minute schedule change data provide information for properly synchronizing the scheduling clock (system clock 230) with a clock corresponding

to the first corresponding program source (schedule update information transmitted from the first program source). This is done by providing the schedule update information and by recording a selected program by comparing the system clock 230 to the program start time copied to the Record Memo RAM 236 from the program start time stored in schedule memory 232 and updated by a schedule update time (Ans. 15 and Finding of Fact 3).

The Examiner further responds that Young teaches multiple programs transmitted from multiple sources can be scheduled for recordings (Figure 4) and can be shifted in time due to updated schedule information (Finding of Fact 4). Thus, the Examiner concludes that Young teaches a second time reference information providing information for synchronizing the scheduling clock with a clock of a second corresponding program source (Ans. 16).

Therefore, in other words, Young teaches that the system clock 230 is synchronized with the received updated scheduling clocks from a first and a second (or multiple) channel sources (Findings of Fact 1-4).

We agree with the Examiner's findings of facts and conclusions as set out in the Answer and adopt them as our own.

Thus, Appellants' argument has not persuaded us of error in the Examiner's rejection of claims 1-2, 4-6, 10-11, and 13-17 because Young teaches a tuner for receiving current time reference information from two program sources used to synchronize a scheduling clock with clocks from the two program sources (Findings of Fact 1-4).

Regarding claim 15

Did the Examiner err in determining that Young teaches maintaining for at least a period of time, both the first scheduling clock and the second scheduling clock as claimed?

Appellants repeat the argument that no clock synchronization occurs (App. Br. 11). Appellants further argue that Young does not teach maintaining for a period of time, both the first and second scheduling clocks (App. Br. 12). Appellants explain that “Young has only one system clock, and therefore could only possibly disclose one of the recited scheduling clocks” (App. Br. 12).

The Examiner responds that while Appellants argue that Young has only one system clock, and therefore only one of the recited scheduling clocks, claim 15 does not recite simultaneously maintaining two scheduling clocks during a period of time (Ans. 17). The Examiner further responds that Young clearly teaches maintaining multiple clocks in Figure 4 wherein multiple recordings are scheduled for a period of time (11:30 AM to 9:00 PM during day 4/3) (Finding of Fact 5 and Ans. 17).

We agree with the Examiner’s findings of facts and conclusions as set out in the Answer and adopt them as our own.

Furthermore, we note that Appellants disclosure supports the Examiner’s interpretation wherein it is stated that “[t]he scheduling time clock is re-synchronized to the STT time reference information provided by a particular broadcast source” (Finding of Fact 6). Thus, Appellants’ disclosure indicates that

a single system scheduling clock is re-synchronized to the STT time received from each of the sources. In other words, multiple scheduling clocks would be maintained corresponding to multiple re-synchronizations of the system clock. We note that the only reference to a second clock in Appellants' Specification is regarding the display clock of Figure 2, which is not a scheduling clock (Finding of Fact 7). Furthermore, we note that Appellants' argument is incongruous to the argument raised regarding independent claim 1 from which claim 15 depends, wherein Appellants argued that Young was lacking synchronization of "a scheduling clock" to the clocks of two different programs (App. Br. 8-9).

Thus, Appellants' argument has not persuaded us of error in the Examiner's rejection of claim 15 because Young teaches maintaining for at least a period of time, both the first and second scheduling clocks as claimed.

OBVIOUSNESS

Appellants have presented no further arguments as to the rejected claims 3, 7-9, 12, and 18-19, but instead rely on the arguments provided for claims 1 and 16 (App. Br. 6). Thus, for the same reasons as articulated *supra* we find that the Examiner did not err in rejecting claims 3, 7-9, 12, and 18-19 under 35 U.S.C. § 103(a).

CONCLUSIONS OF LAW

We conclude that the Appellants have not shown that the Examiner erred in rejecting claims 1-2, 4-6, 10-11, and 13-17 under 35 U.S.C. § 102(b), and in rejecting claims 3, 7-9, 12, and 18-19 under 35 U.S.C. § 103(a).

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DECISION

The decision of the Examiner to reject claims 1-19 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

KIS

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